



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2022-0187; FRL-9606-01-R4]

Air Plan Approval; GA; Updates to References to Appendix W Modeling Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Georgia, through the Georgia Environmental Protection Division (GA EPD) on September 1, 2020. Specifically, EPA is proposing to approve updates to the incorporation by reference of federal prevention of significant deterioration (PSD) new source review (NSR) regulations in the Georgia SIP. Based on the proposal to approve this SIP revision, EPA is also proposing to convert the previous conditional approval regarding Georgia's infrastructure SIP's PSD elements for the 2015 Ozone National Ambient Air Quality Standard (NAAQS) to a full approval. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2022-0187 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or

comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Josue Ortiz Borrero, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8085. Mr. Ortiz Borrero can also be reached via electronic mail at ortizborrero.josue@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015, EPA promulgated a revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an “infrastructure SIP” or “iSIP.” States were required to submit such SIP revisions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.¹

¹ In infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

On September 24, 2018, Georgia met its requirement to submit an iSIP for the 2015 8-hour ozone NAAQS by the October 1, 2018, deadline. EPA subsequently approved most of the infrastructure SIP elements for the 2015 Ozone NAAQS for the State.^{2,3} However, regarding the PSD elements of section 110(a)(2)(C), (D)(i)(II) (prong 3), and (J) (hereinafter referred to as element C, Prong 3, and element J, respectively), EPA conditionally approved⁴ these portions of Georgia's iSIP submission because of outdated references to the federal guideline on air quality modeling found in Appendix W of 40 CFR Part 51.⁵

For elements C and J to be approved for PSD, a state needs to demonstrate that its SIP meets the PSD-related infrastructure requirements of these sections. These requirements are met if the state's implementation plan includes a PSD program that meets current federal requirements. Element D(i)(II) (prong 3) is also approvable when a state's implementation plan contains a fully approved PSD program. EPA's PSD regulations at 40 CFR 51.166(l) require that modeling be conducted in accordance with Appendix W, *Guideline on Air Quality Models*. EPA promulgated the most current version of Appendix W on January 17, 2017. *See* 82 FR 5182. Therefore, in order to approve the iSIP PSD elements for the 2015 8-hour ozone NAAQS, PSD regulations in SIPs are required to reference the most current version of Appendix W.

As discussed in the conditional approval for the 2015 ozone iSIP PSD elements, Georgia's SIP contained outdated references to Appendix W, and the State committed to update the outdated references and submit a SIP revision within one year of EPA's final rule conditionally approving these PSD elements. Accordingly, Georgia was required to make its

² For the State of Georgia, EPA approved most elements, except for the Prong 1 and Prong 2 interstate transport provisions, and the PSD provisions (elements C, Prong 3, and J), on March 11, 2020. *See* 85 FR 14147.

³ The Prong 1 and Prong 2 interstate transport provisions for Georgia, were approved on 12/2/2021. *See* 86 FR 68413.

⁴ Under CAA section 110(k)(4), EPA may conditionally approve a SIP revision based on a commitment from a state to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If the state fails to meet the commitment within one year of the final conditional approval, the conditional approval will be treated as a disapproval and EPA will issue a finding of disapproval.

⁵ EPA conditionally approved the PSD provisions of element C, Prong 3, and element J on April 15, 2020. *See* 85 FR 20836. The notice of proposed rulemaking associated with the conditional approval provides additional information regarding the CAA's PSD iSIP provisions. *See* 85 FR 7695 (February 11, 2020).

submission by April 15, 2021. Georgia met this commitment by submitting a SIP revision to correct the deficiencies on or before the applicable deadline. Through this Notice of Proposed Rulemaking (NPRM), EPA is proposing to approve revisions to the SIP-approved PSD rule and is proposing to convert the conditional approval to full approval for Georgia, regarding element C, Prong 3, and element J, for the 2015 8-hour ozone NAAQS infrastructure SIP.

II. What is EPA's Approach to the Review of Infrastructure SIP Submissions?

As discussed above, whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to submit infrastructure SIPs that meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.⁶ Unless otherwise noted below, EPA is following that existing approach in acting on these submissions. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's implementation plan for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.⁷ EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

III. EPA's Analysis of the September 1, 2020, Submittal

On September 1, 2020, Georgia submitted a SIP revision to address its outdated reference to 40 CFR Part 51, Appendix W, and to meet the PSD Infrastructure SIP requirements for the

⁶ EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including EPA's prior action on Georgia infrastructure SIPs to address the 2010 Nitrogen Dioxide NAAQS. *See* 81 FR 41905 (June 28, 2016).

⁷ *See* *Mont. Env'tl. Info. Ctr. v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

2015 8-hour ozone NAAQS.⁸ The SIP revision includes changes to the SIP-approved PSD rule to update the incorporation by reference date for 40 CFR 52.21, including the reference to Appendix W in 40 CFR 52.21(l), and a request to convert the April 15, 2020, conditional approval of the PSD requirements of element C, Prong 3, and element J, of Georgia's 2015 8-hour ozone NAAQS infrastructure SIP to a full approval.

Specifically, the September 1, 2020, SIP revision makes changes to Georgia's Rule 391-3-1-.02(7), *Prevention of Significant Deterioration of Air Quality*. Paragraph (7) previously incorporated federal PSD regulations at 40 CFR 52.21 as promulgated through October 18, 2016. However, the September 1, 2020, SIP revision updates this incorporation by reference date to January 17, 2017. Additionally, Georgia made minor corrections in paragraph (7) by deleting commas after the CFR in citations to Federal rules and adding the word "Part" to a citation to 40 CFR part 52.21(aa)(12)(i)(b) in (7)(b)(21)(xi) for consistency with other citations to 52.21.

As explained in the April 15, 2020, conditional approval notice, Georgia committed to update its PSD regulations to reference the most current version of Appendix W. EPA promulgated the most current version of Appendix W on January 17, 2017. *See* 82 FR 5182. Paragraph 391-3-1-.02(7)(b)9 specifically incorporates the modeling provisions of 40 CFR 52.21(l), which in turn requires that modeling be conducted in accordance with the Guideline on Air Quality Models in Appendix W of 40 CFR Part 51. By updating the incorporation by reference date of the 40 CFR 52.21 provisions referenced in Paragraph 391-3-1-.02(7) in the State's PSD regulations to January 17, 2017, Georgia's PSD regulations include the requirement to use the most recent version of Appendix W when carrying out air quality modeling for PSD purposes. Thus, EPA is proposing to find that Georgia satisfied the requirements of the PSD elements for the 2015 8-hour ozone infrastructure SIP and met the commitment associated with the conditional approval. For the reasons stated above, EPA is proposing to incorporate the

⁸ The September 1, 2020, submittal contains changes to other SIP-approved rules that are not addressed in this notice. EPA will be acting on those rules separately.

changes into the Georgia SIP and convert the April 15, 2020, conditional approval of element C, Prong 3, and element J, of Georgia’s 2015 8-hour ozone NAAQS infrastructure SIP to a full approval.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Georgia Rule 391-3-1-.02(7), titled “Prevention of Significant Deterioration of Air Quality,” state effective July 29, 2020.⁹ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

V. Proposed Action

EPA is proposing to approve the aforementioned changes to the Georgia Rule 391-3-1-.02(7), *Prevention of Significant Deterioration of Air Quality*, and convert the conditional approval for element C, Prong 3, and element J, for the 2015 8-hour ozone Infrastructure SIPs to a full approval.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

⁹ This incorporation by reference excludes the automatic rescission clause at 391-3-1 -.02(7)(a)(2)(iv), and portions of Rule 391-3-1-.02(7) incorporating by reference 40 CFR 52.21(b)(2)(v), and 40 CFR 52.21(b)(3)(iii)(c). *See* 40 CFR 52.570(c).

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175

(65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 9, 2022.

Daniel Blackman,
Regional Administrator,
Region 4.

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